

Appl. No. 09/694,927  
Amdt. Dated 12 November, 2003  
Reply to Office Action of Sept. 12, 2003

### REMARKS/ARGUMENTS

Claims 1-3, 7, 9, 25-26, and 28-33 remain in this application. Claims 4-6, 8, 10-24, and 27 have been previously canceled. Claim 33 is new.

Claims 1, 2, 9, 25 -32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nobuyuki for reasons of record.

Claim 1 has been presently amended to include a baked wafer molded into a desired shape prior to baking not described in Nobuyuki.

Nobuyuki discloses a batter that is baked into a sheet; the resulting baked product is conically rolled up and formed into a waffle cone. Nobuyuki teaches plasticizing the baked product or producing a malleable baked product such that the baked product can be formed and shaped after baking. The presence of organic acid as disclosed in Nobuyuki will act as a plasticizer to aid in forming shapes after baking and as such will not have a modulus as claimed in the present invention. In contrast, the present invention teaches, forming a shape either by molding or extruding of uncooked dough prior to baking, as supported on page 5 -6 of the specification. Nobuyuki teaches away from the present invention as claimed.

Additionally, claim 1 has been presently amended to include the baked wafer sweetener consisting of sucrose, and at least 40% of a member of the group consisting of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group

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consisting of maltose, trehalose, isomalt, and raffinose, and mixtures thereof. Nobuyuki

does not teach the presence of sucrose as taught in the present invention. Thus, the reference does not render the amended claims obvious. The reference does not describe or suggest the elements of the amended claims.

Claims 1-3, 7, 9, and 25-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Finley et al (EPO 0192542) for reasons of record.

Claim 1 has been presently amended to include the baked wafer sweetener consisting of sucrose, and at least 40% of a member of the group consisting of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose, or mixtures thereof. Finley discloses the presence of humectant sugars in a dough and baked good made from such dough. In contrast, the present invention does not disclose the presence of humectant sugars in the baked wafer. Humectant sugars present in Finley act as a plasticizer in the baked product and produce a malleable or moisture permeable product. As such, the presence of humectant sugars in the present invention would produce a product more susceptible to moisture migration having a modulus not within the claimed invention. Finley teaches away from the present invention as claimed. Thus, the reference does not render the amended claims obvious. The reference does not describe or suggest the elements of the amended claims.

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Claims 1, 2-3, 7, 9, 25-26 and 28-32 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 has been presently amended to delete the term "high resistance". Claim 1 has been further amended to add "high" to the phrase "molecular weight" inadvertently deleted in a prior response. Claims 2, 3, 9, 25, 26, 28-32 have been presently amended to include the recitation "frozen food product" as helpfully suggested by the Examiner and to ensure consistency.

The Examiner requested clarification of the moisture content in claims 1-2. The period was properly crossed out in the response filed on 06 June 2003. The moisture content is recited as 9% as supported in the specification and claimed.

Claims 1, 29, and 30 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claim 1 has been presently amended to claim a moisture content of "no greater than about 5%", as supported in the specification on page 9. Claims 29 and 30 have been presently amended to claim a baked wafer in the form of a "cookie" and a "molded cup", as supported in the specification on page 6.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. The Examiner is invited to telephone Applicant's attorney at (763) 764-4158 to facilitate prosecution of this application.

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If necessary, please charge any additional fees or credit overpayment to Deposit

Account No. 07-0900.

Respectfully submitted,

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